

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RUBY THOMPSON)	
Claimant)	
VS.)	
)	
SWISS PRETZEL)	Docket No. 177,528
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Claimant requested review of the Award dated September 20, 1996, entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument on March 12, 1997, in Wichita, Kansas.

APPEARANCES

Dale V. Slape of Wichita, Kansas, appeared for the claimant. William L. Townsley, III, of Wichita, Kansas, appeared for the respondent and its insurance carrier. Edward D. Heath, Jr., of Wichita, Kansas, appeared for the Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge found that claimant's date of accident was April 27, 1993, and awarded claimant permanent partial general disability benefits based upon a 10 percent whole body functional impairment rating. Claimant requested the Appeals Board to review the issues of (1) date of accident, and (2) nature and extent of disability. Those are the only issues before the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire the record, the Appeals Board finds as follows:

The Award entered by the Administrative Law Judge should be affirmed in part and modified in part to change the date of accident to June 8, 1993.

(1) The Appeals Board finds it is more probably true than not that claimant developed bilateral carpal tunnel syndrome as a result of repetitive mini-traumas. The Appeals Board also finds the appropriate date of accident for claimant's period of accidental injury is the last date before claimant left work for her left carpal tunnel surgery on June 9, 1993, and right carpal tunnel release surgery on June 23, 1993. It appears claimant's last day of work before those surgeries was on or about June 8, 1993.

(2) After recuperating from the bilateral carpal tunnel releases, claimant returned to work for the respondent in July 1993 to her former duties as a working manager of respondent's mall restaurants. Claimant continued to work for the respondent until September 1995 when she terminated her employment and moved to Syracuse, Kansas. Claimant contends that she sustained additional injury to her upper extremities because of the work she performed for the respondent between July 1993 and September 1995. The respondent and its insurance carrier contend claimant did not sustain additional injury during the period she worked for the respondent after July 1993.

The Appeals Board finds claimant has failed to prove she sustained additional injury after returning to work for the respondent in July 1993. Claimant has the burden to prove any symptoms she experienced after July 1993 were the result of additional injury rather than residual symptoms from the earlier injuries. Although a comparison of functional impairment ratings is not conclusive evidence, the rating provided by Jane K. Drazek, M.D., pertaining to a December 1995 evaluation is less than the rating provided by J. Mark Melhorn, M.D., in July 1993 immediately after the carpal tunnel release surgeries. In addition, other findings made by Dr. Drazek indicated claimant's upper extremities were better in December 1995 than in July 1993.

The Appeals Board finds that claimant returned to work for the respondent at a comparable wage after recuperating from the bilateral carpal tunnel surgeries and worked for over two years without seeking additional medical treatment for her work-related injuries

after seeing Dr. Melhorn in September and December 1993. Based upon the entire record, the Appeals Board finds that the presumption against work disability as contained in K.S.A. 1992 Supp. 44-510e is applicable to this factual situation. That statute provides in part:

“The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee’s education, training, experience and capacity for rehabilitation, except that in any event the extent of permanent partial general disability shall not be less than [the] percentage of functional impairment. . . . There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury.”

Based upon the above, the Administrative Law Judge’s findings and conclusions that claimant is entitled to an award for permanent partial disability benefits based upon the stipulated 10 percent whole bodily functional impairment rating is affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated September 20, 1996, entered by Administrative Law Judge Jon L. Frobish should be affirmed with respect to the finding that claimant is entitled to an award for a 10 percent permanent partial general disability, but modified to change the date of accident to June 8, 1993.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Ruby Thompson, and against the respondent, Swiss Pretzel, its insurance carrier, Travelers Insurance Company, and the Workers Compensation Fund, for an accidental injury which occurred June 8, 1993, and based upon an average weekly wage of \$290 for 8 weeks of temporary total disability compensation at the rate of \$193.34 per week or \$1,546.72, followed by 407 weeks of permanent partial disability compensation at the rate of \$19.33 per week or \$7,867.31, for a 10% permanent partial general disability, making a total award of \$9,414.03.

As of March 31, 1997, there is due and owing claimant 8 weeks of temporary total disability compensation at the rate of \$193.34 per week or \$1,546.72, followed by 190.86 weeks of permanent partial disability compensation at the rate of \$19.33 per week in the sum of \$3,689.32 for a total of \$5,236.04, which is ordered paid in one lump sum less any

amounts previously paid. The remaining balance of \$4,177.99 is to be paid for 216.14 weeks at the rate of \$19.33 per week, until fully paid or further order of the Director.

The Appeals Board hereby adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
William L. Townsley, III, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director